

## Article 81.

### Corporations for Protection and Development of Forests.

#### **§ 106-980. Private limited dividend corporations may be formed.**

(a) In this Article, unless the context requires otherwise, "Department" means the Department of Agriculture and Consumer Services, and "Commissioner" means the Commissioner of Agriculture.

(b) Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the Commissioner shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. (1933, c. 178, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 80; 1991 (Reg. Sess., 1992), c. 890, s. 4; 1997-443, s. 11A.119(a); 2011-145, s. 13.25(cc), (dd); 2018-113, s. 5(a).)

#### **§ 106-981. Manner of organizing.**

A corporation formed under this Article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this Article and that it consents to be and shall be at all times subject to the rules and supervision of the Commissioner, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules from time to time imposed by the Commissioner. (1933, c. 178, s. 2; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 81; 2011-145, s. 13.25(cc); 2018-113, s. 5(b).)

#### **§ 106-982. Directors.**

There shall not be less than three directors, one of whom shall always be a person designated by the Commissioner, which one need not be a stockholder. (1933, c. 178, s. 3; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 82; 2011-145, s. 13.25(cc); 2018-113, s. 5(c).)

#### **§ 106-983. Duties of supervision by Commissioner.**

Corporations formed under this Article shall be regulated by the Commissioner in the manner provided in this Article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this Article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties which cannot be fairly charged to any particular corporation or corporations shall be charged to, and paid by, all the corporations then organized and existing under this Article pro rata according to their respective stock capitalizations. The Commissioner shall:

- (1) Adopt rules to implement this Article and to protect and develop forests subject to its jurisdiction.

- (2) Order all corporations organized under this Article to do such acts as may be necessary to comply with the provisions of law and the rules adopted by the Commissioner, or to refrain from doing any acts in violation thereof.
- (3) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the Commissioner.
- (4) Require every such corporation to file with the Commissioner annual reports and, if the Commissioner shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the Commissioner may require. (1933, c. 178, s. 4; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 827, s. 94; 1989, c. 727, s. 83; 1997-443, s. 11A.119(a); 2011-145, s. 13.25(cc), (dd).)

**§ 106-984. Powers of Commissioner.**

The Commissioner may:

- (1) Examine at any time all books, contracts, records, documents and papers of any such corporation.
- (2) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The Commissioner shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.
- (3) Enforce the provisions of this Article, a rule implementing this Article, or an order issued under this Article by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief. (1933, c. 178, s. 5; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 827, s. 95; 1989, c. 727, s. 84; 2011-145, s. 13.25(cc), (dd).)

**§ 106-985. Provision for appeal by corporations to Governor.**

If any corporation organized under this Article is dissatisfied with or aggrieved at any rule or order imposed upon it by the Commissioner, or any valuation or appraisal of any of its property made by the Commissioner, or any failure of or refusal by the Commissioner to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the Governor in a written mandate to the Commissioner, who shall abide thereby and take such actions as the same may direct. (1933, c. 178, s. 6; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 85; 2011-145, s. 13.25(cc), (dd).)

**§ 106-986. Limitations as to dividends.**

The shares of stock of corporations organized under this Article shall have a par value and, except as provided in G.S. 106-988 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum (6%) per annum on stock having a preference as to dividends, or eight per centum (8%) per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest. (1933, c. 178, s. 7; 2011-145, s. 13.25(cc), (dd).)

**§ 106-987. Issuance of securities restricted.**

No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the Commissioner. (1933, c. 178, s. 8; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 86; 2011-145, s. 13.25(cc), (dd).)

**§ 106-988. Limitation on bounties to stockholders.**

Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in G.S. 106-986 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof. (1933, c. 178, s. 9; 2011-145, s. 13.25(cc), (dd).)

**§ 106-989. Earnings above dividend requirements payable to State.**

Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in G.S. 106-986 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the Commissioner shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered. (1933, c. 178, s. 10; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 87; 2011-145, s. 13.25(cc), (dd).)

**§ 106-990. Dissolution of corporation.**

Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within 20 years of the date of its organization unless the same is accompanied by a certificate of the Commissioner consenting to such dissolution. (1933, c. 178, s. 11; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 88; 2011-145, s. 13.25(cc), (dd).)

**§ 106-991. Cutting and sale of timber.**

Any such corporation may cut and sell the timber on its land or permit the cutting thereof, but all such cuttings shall be in accordance with the rules, restrictions and limitations imposed by the Commissioner, who shall impose such rules, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time. (1933, c. 178, s. 12; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 89; 2011-145, s. 13.25(cc), (dd).)

**§ 106-992. Corporation may not sell or convey without consent of Commissioner, or pay higher interest rate than 6%.**

No such corporation shall do any of the following:

- (1) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the Commissioner of the terms of such sale, transfer or assignment, and unless the Commissioner shall consent thereto, and if the Commissioner shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the rules and supervision of the Commissioner for such period as the latter may require.
- (2) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum (6%) per annum without the consent of the Commissioner.
- (3) Mortgage any real property without first having obtained the consent of the Commissioner. (1933, c. 178, s. 13; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 90; 2011-145, s. 13.25(cc), (dd).)

**§ 106-993. Power to borrow money limited.**

Any such corporation formed under this Article may, subject to the approval of the Commissioner, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the Commissioner, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the rules of the Commissioner for such period as the mortgage or trust indenture may specify. (1933, c. 178, s. 14; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 91; 2011-145, s. 13.25(cc), (dd).)

**§ 106-994. Commissioner to approve development of forests.**

No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the Commissioner, and such approval shall not be given unless:

- (1) The Commissioner shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the Commissioner shall require of the activities to be included in the project, such statement to set forth the proposals as to
  - a. Fire prevention and protection,
  - b. Protection against insects and tree diseases,

- c. Protection against damage by livestock and game,
  - d. Means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and
  - e. Planting and spacing of trees.
- (2) There shall be submitted to the Commissioner a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the Commissioner as to where such funds are to be secured.
  - (3) The Commissioner shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained-yield basis except insofar as the Commissioner shall consider the same impracticable.
  - (4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the Commissioner, and that it will at all times comply with such rules concerning the project as the Commissioner shall from time to time impose. (1933, c. 178, s. 15; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 92; 2011-145, s. 13.25(cc), (dd).)

**§ 106-995. Application of corporate income.**

The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the Commissioner to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this Article; third, the balance, if any, in reduction of debts. (1933, c. 178, s. 16; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 93; 2011-145, s. 13.25(cc), (dd).)

**§ 106-996. Reorganization of corporations.**

Reorganization of corporations organized under this Article shall be subject to the supervision of the Commissioner and no such reorganization shall be had without the authorization of the Commissioner. (1933, c. 178, s. 17; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 94; 2011-145, s. 13.25(cc), (dd).)

**§ 106-997:** Reserved for future codification purposes.

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